IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

AR.No. 22 of 2007()

PETITIONERS
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1. K.G.SABU, S/O.LATE K.V.GOPINATH,
KUDILINGAL HOUSE, EDAYAPPURAM,
ALUVA, PIN: 683 101.

2. SHEENA.K., D/O.SASIDHARAN, KUDILINGAL
HOUSE, EDAYAPPURAM, ALUVA. PIN: 683 101.

3. K.G.SHAJI, S/O.LATE K.V.GOPINATH,
KUDILINGAL HOUSE, EDAYAPPURAM, ALUVA,
PIN: 683 101 REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER SRI.K.G.SATHEESH.

4. MRS.BEETHA SHAJI, D/O.CHANDRA MOHAN,
KUDILINGAL HOUSE, EDAYAPPURAM, ALUVA,
PIN: 683 101.

BY ADV. SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS
SRI.L.RAM MOHAN

RESPONDENTS:
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1. C.S.SATHEESAN,
S/O.LATE C.O.SREENIVASAN, CHATTUPADATH
HOUSE, 383/13, JAWAHAR ROAD, ALWAYE - 683 101.

2. K.E.SUMA, W/O.C.S.SATHEESAN,
CHATTUPADATH HOUSE, 383/13,
JAWAHAR ROAD, ALWAYE - 683 101.

BY ADV. SRI.RAJEEV NAMBISAN

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

A.R. NO.22 of 2007

Dated this the 11th day of October , 2007

O R D E R

On the basis of Annexures A1 and A2, the petitioners submit that they and the respondents were carrying on business of Cable Operators, T.V. Net Work Operators and other allied activities under the name and style of " Globe Vision". In pursuance to Annexures A1 and A2, they entered into business agreement with M/s. Asianet Satelite Communication (P) Ltd and with KSEB for the purpose of cable T.V. Distribution to various households under the Electrical Sub Division, Aluva. Annexures A3 and A4 agreements are relied on. It is stated that during January 2006, disputes arose between the petitioners and the respondents and it is claimed that the majority partners resolved to expel respondents 1 and 2 from the partnership vide resolution dated 31.5.2006. The first petitioner, who was managing partner, instituted suit O.S. No.211/2006 before the Munsiff Court, Aluva seeking a decree of injunction against respondents 1 and 2. In that suit, Annexures A4(a) counter affidavit was filed by the respondents contending that the suit is not maintainable and that the

disputes can be resolved only through the arbitration. The petitioners point out that clause 26 of Annexure A2 is an arbitration agreement between the parties and that disputes between the parties are to be settled by arbitration through the arbitrator appointed unanimously by the partners. Since the request of the petitioners to refer the disputes for arbitration to be conducted by a retired District Judge was not agreeable to the respondents, Annexure A5 notice followed by Annexure A6 correction notice were issued to the respondents. To Annexures A5 and A6, the respondents sent Annexure A7 reply contending that the decision of the petitioners to expel respondents 1 and 2 is not legally sustainable for want of quorum to convene meeting and that the appointment of the first petitioner as the Managing Partner is also unsustainable. On receiving Annexure A7, the petitioners sent Annexure A8 reiterating their stand to which the respondents sent Annexure A9 in which it is stated that they have not been informed about the actual subject matter of the disputes or about the allegations against them. The petitioners submit that the respondents are deliberately evading compliance with the demand of the petitioners to settle the disputes by arbitration proceedings. In paragraph 10 of the Arbitration Request, they have enumerated the disputes. Annexure A10 is also relied on to show the present stage

of the disputes between the parties. It is then stated in the Arbitration Request that the first respondent maliciously got a fraudulent partnership to be created with one Sri.P.S.Sreekumar and got the same registered . On coming to know about that, the petitioners filed Annexure A11 suit before the Sub Court, Paravoor for declaration and for permanent prohibitory injunction against the respondents. The said suit was decreed on 4.1.2007 and it is claimed that the said suit does not relate to Annexure A1 and A2 and was only for declaration relating to the sham partnership firm created between the first respondent and Sri.Sreekumar for the purpose of defeating the smooth functioning of the petitioners' firm covered by Annexures A1 and A2. The Arbitration Request on the above facts is filed on the basis that the appointment procedure contemplated by the agreement has failed and hence the petitioners are entitled to invoke the statutory appointment procedure under Section 11 (5) of the Arbitration & conciliation Act.

2. A detailed objection has been filed by the respondents denying the allegations in the Arbitration Request. But, the execution of Annexures A1 and A2 and the clauses contained therein are not disputed and the existence of arbitration clause therein is not disputed. It is contended that the request is not maintainable since

the partnership firm is an unregistered one and the arbitration request itself will be hit by Section 69 (3) of the Indian Partnership Act and will have to be rejected. It is also contended that, having already filed suit before the Sub court, Paravur(O.S.No.383/2006) i.e. Annexure A11, the petitioners are not entitled to invoke the arbitration clause in Annexures A1 and A2.

3. I have heard the submissions of Sri. Mohan Jacob George, the learned counsel for the petitioners and Sri. Sajan Puthenveetil representing Sri.Rajiv Nambisan the learned counsel for the respondents. Placing very strong reliance on the judgment of the Supreme Court in **Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd. (AIR 1964 Supreme Court 1882),** it was submitted on behalf of the respondents that the Arbitration Request is not maintainable since the partnership evidenced by Annexures A1 and A2 is not a registered one. It was also argued on behalf of the respondents that the very filing of Annexure A11 will amounts to waiver of arbitration clause in Annexure A1 and A2 and for that reason also, the present request under Section 11 (5) of the Act is not maintainable.

4. Sri.Mohan Jacob George, the learned counsel for the petitioners will very ably resist the submissions of the learned counsel

for the respondents. The learned counsel would refer to various judicial precedents governing Section 11, 5 and 6 of the Arbitration & Conciliation Act.

5. I am unable to agree that the judgment of the Supreme Court in Jagdish Chandra Gupta's case (supra) is an authority for the proposition that non registration of the partnership evidenced by Annexures A1 and A2 will be fatal to the petitioners' request for appointment of an independent and impartial arbitrator. I am also convinced that the scope of Annexure A11 suit is different from the scope of the arbitration proceedings sought for by the petitioners.

6. Admittedly, disputes arisen between the parties and Annexures A1 and A2 contains arbitration clause. The agreed appointment procedure regarding appointment of arbitrator has failed. Having regard to the statutory provisions and the judicial precedents governing the point, I do not find any reason as to why this Arbitration Request should not be granted. Therefore, This Arbitration Request will stand allowed. It is open to the respondents to contend before the arbitrator that the disputes are not arbitrable. The arbitrator will pass award on that question also apart from adjudicating the claims set out in the Arbitration Request and Annexure A10 by the petitioners

and counter claims, if any which should be raised by the respondents. According to me, no prejudice will be caused to either of the parties by appointing the retired District Judge known for his learning and integrity. Therefore, I appoint Sri.K.Ramachandran, Advocate of this court and retired District Judge as Arbitrator for settling all the issues between the parties. Arbitrator will enter on reference and pass award at his earliest.

PIUS C. KURIAKOSE,

JUDGE.

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